

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-219971

DATE: February 21, 1986

MATTER OF: Gordon W. Kennedy

DIGEST:

Where an employee, separated by one agency as the result of a reduction in force, is subsequently hired within the following year by another agency, both the gaining and the losing agency have discretion to pay all, any or none of the individual's relocation expenses. Since it is the Department of Defense's policy for the losing agency to pay these costs, the determination by the Defense Logistics Agency as the gaining agency not to pay these expenses was proper. Where the gaining agency has declined to pay any of such expenses, the losing agency's payment of a portion of the employee's relocation expenses is not contingent upon any agreement between the heads of the two agencies involved.

This action is in response to a request from Gordon W. Kennedy for reconsideration of our Claims Group's settlement of April 19, 1985, advising the Soil Conservation Service and the Defense Logistics Agency that each has the discretion to pay all, some or none of the employee's relocation and travel expenses.^{1/} We affirm that position. Thus, the Soil Conservation Service may reimburse the employee for all or any portion of his otherwise allowable relocation expenses.

^{1/} The request for reconsideration was made through the Office of the Honorable Strom Thurmond, United States Senator, by letter of June 28, 1985.

BACKGROUND

Mr. Kennedy was employed as a supply clerk, GS-4, step 10, in Spokane, Washington, by the Soil Conservation Service, U.S. Department of Agriculture (hereafter referred to as Conservation Service). Due to a reduction-in-force Mr. Kennedy's position was abolished and he was separated from Government service on June 23, 1984.

In seeking other Federal employment, Mr. Kennedy participated in the Displaced Employee Program provided by the Conservation Service and the Office of Personnel Management. See 5 C.F.R. § 330.301 (1984) et. seq. and the Federal Personnel Manual, Chapter 330, Subchapter 3. On his application for placement assistance Mr. Kennedy indicated that in addition to the Spokane, Washington area, he would accept employment in a number of areas throughout the United States. In October 1984 Mr. Kennedy was offered and accepted a position with the Defense Logistics Agency as a supply clerk, GS-4, in Columbia, South Carolina.

At that time the Defense Logistics Agency advised Mr. Kennedy that it would not pay any of his relocation expenses. Mr. Kennedy accepted the position with this knowledge. On October 12, 1984, Mr. Kennedy had a meeting with officials of the Conservation Service in which he explained that it was his understanding that the Conservation Service was required to pay his relocation expenses. The administrative officer who participated in that meeting advised Mr. Kennedy that he would look into the matter and indicated that the Conservation Service would pay any relocation expenses it was required to pay.

During the week of October 15, 1984, Mr. Kennedy kept in contact with the Conservation Service regarding his relocation expense entitlement. The Conservation Service was apparently in the process of determining whether or not it was required to pay Mr. Kennedy's expenses, for on October 19, 1984, Mr. Kennedy went to the Conservation Service to complete several forms that would be necessary if the agency were to pay his expenses. When Mr. Kennedy visited the Conservation Service again on October 26, 1984, he was reassured that his request for relocation expenses

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was being processed. However, no travel authorization was ever issued.

In November 1984, after reporting for duty in Columbia, South Carolina, Mr. Kennedy learned that the State Conservationist had denied his request for relocation expenses. In response to inquiries made by Mr. Kennedy's Congressman, the Conservation Service advised that it is their policy to pay transfer expenses only when the Conservation Service is the gaining agency and the Defense Logistics Agency advised that under Department of Defense policy it is not required to pay relocation expenses when it hires an employee who has been separated by reduction in force. The Conservation Service advised the Congressman that it had offered to pay 25 percent of Mr. Kennedy's relocation costs but that the Defense Logistics Agency had not been willing to negotiate concerning payment of the remaining 75 percent.

By letters dated April 19, 1985, our Claims Group issued a settlement notifying the Defense Logistics Agency and the Soil Conservation Service that each had the discretion to pay all, some or none of Mr. Kennedy's expenses if such a decision was based upon a consistent application of that discretion and was not arbitrary or capricious. Mr. Kennedy has not been reimbursed by either agency for any of the expenses he claims in connection with his relocation to South Carolina.

ANALYSIS

The basic authority for payment of relocation expenses is found in 5 U.S.C. §§ 5724 and 5724a (1982). The entitlements of employees involved in reductions in force are specifically addressed in 5 U.S.C. § 5724(e) and § 5724a(c). The latter provides:

"(c) Under such regulations as the President may prescribe, a former employee separated by reason of reduction in force or transfer of function who within 1 year after separation is reemployed by a nontemporary appointment at a different geographical location from that where the separation occurred may be allowed and paid the expenses

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authorized by sections 5724, 5725, 5726(b), and 5727 of this title, and may receive the benefits authorized by subsections (a) and (b) of this section, in the same manner as though he had been transferred in the interest of the Government without a break in service to the location of reemployment from the location where separated."

Section 5724(e) provides that when an employee transfers from one agency to another, the gaining agency pays the employee's expenses. It specifically provides, however, that when the transfer is due to a reduction in force, relocation expenses may be paid in whole or in part by the gaining agency or the losing agency as may be agreed upon by the heads of the agencies concerned. We have held that this latter provision applies regardless of whether the employee subject to reduction in force is transferred between agencies without a break in service or is reemployed by a different agency within 1 year following his separation. 53 Comp. Gen. 99 (1973).

The regulation implementing 5 U.S.C. § 5724a(c) is found in the Federal Travel Regulations, para. 2-1.5d(2) (Supp. 10, March 13, 1984) incorp. by ref. 41 C.F.R. 101-7.003 (1984). Under this regulation a former employee separated by reason of a reduction in force who is reemployed within 1 year of the date of separation at a different permanent duty station may be paid relocation expenses as though he had been transferred in the interest of the Government without a break in service. The allocation of such expenses when two agencies are involved is addressed by FTR, para. 2-1.6b which provides, as does 5 U.S.C. § 5724(e), that these expenses may be paid in whole or in part by the gaining or the losing agency.

Under the authorities cited above there is no question that either the Defense Logistics Agency or the Conservation Service may pay Mr. Kennedy's expenses of relocating to South Carolina. The issue presented is whether either agency is required to pay any or all of these costs.

We have held that the losing agency--the agency from which an employee was separated by reduction in force--is

not required to pay any of the relocation expenses incurred incident to his reemployment within a 1-year period by a different agency. Patricia C. Reed, 55 Comp. Gen. 1339 (1976). In that case we sustained the policy of the Selective Service System not to approve payment of relocation expenses when its former employee is hired by a different agency. In sustaining that policy, we stated:

"* * * The language of section 5724(e), as well as the Federal Travel Regulations, is permissive and vests broad discretion to the individual agencies involved in determining whether or not a reimbursement of relocation expenses may be made to an employee who is separated by a RIF and reemployed within 1 year at another geographical location."

The gaining agency--the agency that hires the former employee within 1 year of his separation by reduction in force by a different agency--has the same degree of discretion. Russell F. Gober, B-209085, March 22, 1983. In that case the gaining agency, the Federal Railroad Administration, refused to issue travel orders to individuals it hired who earlier had been separated through reduction in force by the National Transportation Safety Board. Its refusal was based on the implications relocation expense payments would have with respect to the agency's position in an on-going labor relations matter. In response to the National Transportation Safety Board's offer to pay up to \$5,000 in relocation expenses we recognized that the losing agency has authority to pay any, all or none of the employee's relocation expenses regardless of the determination by the gaining agency to pay none of those expenses.

In Mr. Kennedy's case, the determination by the Defense Logistics Agency, the gaining agency, not to allow relocation expenses is based on the underlying Department of Defense policy set forth in Volume 2 of the Joint Travel Regulations. Under this policy, the Department of Defense component may pay relocation expenses only when it is the losing agency.

Thus, it appears that the Defense Logistics Agency's refusal to pay relocation expenses in Mr. Kennedy's

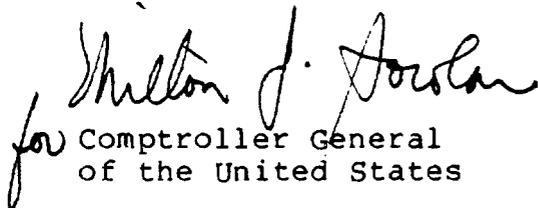
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case is consistent with the Department of Defense policy and in accordance with our holding in Russell F. Gober, B-209085, supra.

Consistent with our holding in Patricia C. Reed, 55 Comp. Gen. 1339, supra, the Conservation Service, as the losing agency, also has discretion to refuse to pay any or all of Mr. Kennedy's relocation expenses. Its discretion is not diminished by the Defense Logistics Agency's refusal to pay any or all of the expenses in issue. While the Conservation Service has stated that it has never paid relocation expenses except when it is the gaining agency, the record reflects that in this case an offer was made by the State Conservationist to pay 25 percent of Mr. Kennedy's relocation expenses. The Conservation Service has not paid even this amount, apparently based on the erroneous assumption that it has authority to pay this amount only if the Defense Logistics Agency will bear the remaining 75 percent of Mr. Kennedy's relocation expenses.

While 5 U.S.C. § 5724(e) states that relocation expenses may be paid in whole or in part by either agency "as may be agreed upon by the heads of the agencies concerned," this provision does not limit either agency's authority to pay any or all of an employee's expenses where the other agency has declined to pay any such costs. The language concerning agreement by the heads of the agencies concerned is intended to prevent duplicate payments, not to limit an individual agency's discretion.

Accordingly we sustain the settlement issued by our Claims Group insofar as it holds that the statute permits the gaining or losing agency to pay all, any or none of the relocation expenses in a case such as this. On the facts presented it is not clear whether the Conservation Service has finally determined that it would pay 25 percent of Mr. Kennedy's relocation expenses. In view of this decision, however, the Conservation Service should now determine whether this part of the expenses, or any greater or lesser amount, will be paid.


for Comptroller General
of the United States